

STATE OF MICHIGAN
COURT OF APPEALS

In re LEWIS, Minors.

UNPUBLISHED

July 16, 2015

No. 324995

Wayne Circuit Court

Family Division

LC No. 14-517421-NA

Before: HOEKSTRA, P.J., and JANSEN and METER, JJ.

PER CURIAM.

Respondent father appeals as of right from an order terminating his parental rights to two minor children pursuant to MCL 712A.19b(3)(b)(i), (b)(iii), (j), and (k)(ii). We affirm.

I. FACTUAL BACKGROUND

In August 2014, the court authorized the initial petition involving these children. The petition sought court jurisdiction over the children and termination of respondent's parental rights based on respondent's sexual abuse of the children's half-sister, criminal history, and domestic violence with the children's mother. At the time the petition was filed, respondent was incarcerated on criminal charges stemming from the alleged sexual abuse of the children's half-sister. A hearing took place in October 2014, while respondent's criminal charges were pending. The 13-year-old half-sister testified in detail about respondent's sexual abuse, which she claimed started in December 2013. Following the proofs, the court assumed jurisdiction over respondent's two minor children and terminated his parental rights.

II. STANDARD OF REVIEW

In order to terminate parental rights, the trial court must find that a statutory ground for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). Only one statutory ground need be established to support termination of a respondent's parental rights. *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009). Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court shall order termination of parental rights if the court also finds that termination of parental rights is in the best interests of the child. MCL 712A.19b(5). Whether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The trial court's decisions with regard to both the statutory grounds for

termination and with regard to the child's best interests are reviewed for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

III. ANALYSIS

MCL 712A.19b(3) permits termination of parental rights under the following circumstances:

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(i) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

* * *

(iii) A nonparent adult's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse by the nonparent adult in the foreseeable future if placed in the parent's home.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

(k) The parent abused the child or a sibling of the child and the abuse included

* * *

(ii) Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.

The evidence established that respondent engaged in criminal sexual conduct against his children's half-sister. The children's mother testified that she observed respondent lying on top of her 13-year-old daughter, with both of their pants down, in July 2014. According to the child, respondent began "sexually harassing" her in December 2013, and she testified about ongoing abuse. She stated, among other things, that in December 2013 respondent forcibly penetrated her vagina with his penis while putting his hand over her mouth so that she would not scream. Respondent denied sexually abusing the child. On appeal, he notes that her physical examination after the July 2014 incident revealed no injury and that the child acknowledged during testimony that she wanted him to leave the home. He argues that this suggests that the child lied about the allegations. However, the trial court specifically found the child credible. The trial court's decision was largely based on its credibility assessment, and this Court defers to "the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it."

MCR 2.613(C), MCR 3.902(A); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011).

Respondent's sexual abuse of the child clearly justified termination under MCL 712A.19b(3)(k)(ii). Although there was no evidence that respondent ever actually abused either of his own children, his conduct toward their half-sister suggested how he would treat them and justified termination under MCL 712A.19b(3)(b)(i) also. *Foster*, 285 Mich App at 631. In addition to respondent's sexual abuse of his children's half-sister, the evidence established that respondent had violent tendencies. There was a history of domestic violence with the children's mother, prompting her to seek personal protection orders. He had hit the mother in the head with a hammer, causing injuries that required her to go to a hospital. There were also "push and shove" incidents, and he had recently grabbed her by the neck. Respondent's tendency toward violence, as well as his sexual abuse of a child, supported the court's finding that there was a reasonable likelihood of future harm based on respondent's conduct, justifying termination under subsection (3)(j) as well.¹

In deciding a child's best interests, a court may consider the child's bond to his parent; the parent's parenting ability; the child's need for permanency, stability, and finality; and the suitability of alternative homes. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014); *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). The trial court should weigh all the evidence available to determine the child's best interests. *White*, 303 Mich App at 713.

Respondent presented two witnesses who testified that respondent and his children loved each other and were bonded and that he was the children's primary caregiver. The court specifically noted that it did not give much weight to one of the witnesses and that it found the other witness to lack credibility. As noted, we give special deference to the trial court's assessment of credibility. In addition, the court noted that respondent was a sexual predator who preyed on children and indicated that his children should not be exposed to this. There was ample evidence that respondent sexually abused his children's half-sister over a lengthy period. The evidence also established that respondent had violent tendencies. Given these circumstances, the trial court did not clearly err in concluding that termination was in the children's best interests.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Kathleen Jansen
/s/ Patrick M. Meter

¹As petitioner concedes, termination under MCL 712A.19b(3)(b)(iii) was not appropriate. However, this was harmless error because only one statutory ground need be established to support termination of a respondent's parental rights. *Foster*, 285 Mich App at 633.